

Filed 8/15/19 In re I.P. CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re I.P., a Person Coming  
Under the Juvenile Court Law.

B294697  
(Los Angeles County  
Super. Ct. No.  
18CCJP06802B)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Philip L. Soto, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Veronica Randazzo, Deputy  
County Counsel, for Plaintiff and Respondent.

---

## **I. INTRODUCTION**

D.M. (father) appeals from the juvenile court's jurisdiction and disposition orders. Father contends that substantial evidence does not support finding jurisdiction over his child, I.P. (child), or the court's order removing the child from his custody. Finding no error, we affirm.

## **II. BACKGROUND**

### *A. Referral and Detention Report*

#### 1. May 26, 2018, domestic violence against mother

On May 26, 2018, father was arrested for engaging in domestic violence against M.P. (mother), who was pregnant with the child. Mother told the police that she and father had argued because father believed she was texting one of her ex-boyfriends. When mother walked out of the home with eight-year-old B.P.,<sup>1</sup> her daughter from a prior relationship, father grabbed mother by her shoulder and shook her for approximately one minute, stating, "You see the shit that he makes me do?" Mother further

---

<sup>1</sup> B.P. is not a subject of this appeal.

stated that she and father argued a lot, and that sometimes the arguments became physical but she did not like to report these incidents to the police.

Father told the police that he and mother argued because mother said she was having sex with her ex-boyfriend while pregnant with the child. Father snatched mother's telephone from her and saw text messages from the ex-boyfriend. Father denied touching mother during the argument.

On or about September 17, 2018, father was convicted of battering mother and was sentenced to three years of probation and one day in jail. As a condition of probation, father was ordered to complete a domestic violence program. That same date, the criminal court issued a domestic violence protective order, which prevented father from having any contact with mother or coming within 100 yards of mother, but permitted peaceful contact for the safe exchange of children, pursuant to court ordered visitation.

In October 2018, father admitted to a social worker that he had pulled mother on her shoulders to bring her back into the home so that the two would not argue outside.

## 2. Prior convictions

Father was previously convicted of assaulting a person with a firearm, in connection with a February 3, 2010, incident. Father was sentenced to nine years in prison.

### 3. August 2018 incident

On September 24, 2018, a caller telephoned the Child Protection Hotline to report that a couple of months prior (which the record indicates was in or about August 2018), father screamed at mother and struck maternal uncle and maternal grandfather when they tried to intervene. B.P. was present during the incident. In August 2018, the child, I.P., was between one- and two-months old.

On September 28, 2018, a social worker interviewed B.P., who stated that father, maternal uncle, and maternal grandfather had been in a physical altercation. B.P. explained that father was holding the child when he walked outside the home. B.P. did not trust father with the child, so she followed father outside. Father told B.P. to get away from him and to go back inside, which made B.P. cry. Maternal uncle asked father why he was upsetting B.P., which resulted in the two men fighting outside. Father then told maternal grandfather to come outside and fight him. B.P. saw all three men fighting.

B.P. stated that the last time she saw father and mother together was when they went out to eat last Friday or Saturday (which was September 21 or 22, 2018). B.P. also stated that father would sneak into the family home through mother's bedroom window, and he had most recently done so on Monday (September 24, 2018).

Mother discussed the August 2018 incident with the social worker. She did not contest that father was carrying the child when the incident began. But, according to mother, maternal uncle put his hands on father first. Also, maternal grandfather grabbed father by the neck. Mother stated that maternal uncle

and maternal grandfather beat up father, and father had a swollen face afterwards. Father moved out of the family home that day.

On October 10, 2018, father described the August 2018 incident to the social worker. He stated that he was holding the child when maternal uncle came at him to fight. Father put the child down on the couch. Father stated maternal uncle tried to hit him, and that maternal grandfather exited the home and began to hit father as well. The social worker observed father had “trouble sticking to the story as he continued to get off track and complained about [maternal grandmother].”

4. September 27, 2018, incident

On September 28, 2018, the Child Protection Hotline received an Immediate Response referral. The caller stated that on September 27, 2018, father attacked maternal grandfather outside of the family home by striking him in the face with a rock. The caller added that father had threatened to hit B.P. and called her father a “deadbeat” and “good for nothing.”

Mother told the social worker that father had come to the family home to talk to maternal grandfather, not to see her. Mother stated maternal grandfather tried to hit father and father defended himself. Maternal grandfather suffered a black eye in the altercation.

B.P. told the social worker that father had something in his hand and started to hit maternal grandfather.

According to father, he had been at mother’s family home to see the child. Father told the social worker that while he waited for mother to arrive, he asked maternal grandfather for the

return of his rental deposit. Maternal grandfather began to mock father and then tried to hit him. Father admitted he fought back but denied using a weapon. Father left without seeing the child.

5. Marijuana use

Father denied substance abuse. He stated that he only used marijuana about once a week but was trying to stop. An October 10, 2018, sample obtained from father tested positive for cannabinoids.

B. *Section 300 Petition and Detention Hearing*

On October 22, 2018, the Los Angeles County Department of Child and Family Services (Department) filed a juvenile dependency petition for B.P. and the child, I.P., pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).<sup>2</sup> In counts a-1 and b-1, the Department alleged that mother and father had a history of violent altercations and that father's violent conduct and mother's failure to protect the children from such conduct "endanger[ed] the children's physical health and safety[,] and place[d] the children at risk of serious physical harm, damage, danger, and failure to protect."

In counts a-2 and b-2, the Department alleged father demonstrated "violent and assaultive behavior" during the August 2018 incident, the September 27, 2018, incident, and father's prior assault with a firearm on a person. The Department alleged mother "knew of . . . father's violent and

---

<sup>2</sup> Further statutory references are to the Welfare and Institutions Code.

assaultive behavior and failed to protect the children by allowing . . . father to reside in the children's home and to have unlimited access to the children. Such violent and assaultive behavior on the part of . . . father and . . . mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage, danger and failure to protect."

For count b-3, the Department alleged father was a current abuser of marijuana, which rendered him incapable of providing regular care.

On October 23, 2018, the juvenile court found a prima facie case to detain the children. The court ordered the children removed from the home and custody of mother and father and placed in the home of maternal aunt.

### *C. Jurisdiction/Disposition Report*

On November 9, 2018, a dependency investigator interviewed B.P. and mother. Regarding the May 26, 2018, incident, B.P. reported that after returning home, mother wanted to leave immediately because father was there. Father ran after mother and started to push her towards the gate. Regarding the August 2018 incident, B.P. reported that father fought with maternal uncle outside the home. During the fight, B.P. pushed the child in her stroller, inside the house, and could hear the fight taking place outside.

Mother stated she had been in a relationship with father for four and a half years, and had been living with him for three years. Mother and father got into arguments about rent money:

maternal grandmother charged mother and father rent for living in the house, but did not charge rent to maternal uncle.

On November 8, 2018, the investigator interviewed father. Father stated that the August 2018 incident occurred while he was still living in mother's family's home. Father stated maternal grandmother kicked him out of the house that day. Father was holding the child outside when B.P. followed him. B.P. told father she did not trust the child with him. Father told B.P. to go back inside, and B.P. ran inside, crying. After B.P. started to cry, maternal uncle came out of his room and told father to put the child down. After father put the child down, maternal uncle punched him, and the two men started to fight. Maternal grandfather came outside and also began hitting father.

Regarding the September 27, 2018, incident, father stated that he had gone to mother's home to see the child. Mother and the child were not home, so father waited outside. Father saw maternal grandfather sleeping outside in a car, and decided to approach him. Father asked about the deposit he gave when he moved into the home, and maternal grandfather laughed at him. Father stated maternal grandfather hit him in the chest. Father hit him back, and the two started to fight for a couple of seconds. Father stated that maternal grandfather walked away and tried to pick up an object, at which point father left. Father denied hitting maternal grandfather with an object.

Father admitted to continuing to contact mother after the September 17, 2018, protective order had issued. Father knew he was not supposed to contact mother, but they "love each other, and [they] want to move in together."

Father reported that when he was around 18 or 19 years old, he was arrested for possession of a controlled substance (he



could not recall whether it was cocaine or crack). Father denied the substance was his. Father further stated that he had stopped smoking marijuana when he was drug tested in relation to this case, but previously smoked marijuana approximately every day, twice a day. Father denied smoking marijuana in the children's presence. Father had not completed a substance abuse program. Father began domestic violence classes in October 2018.

Father received referrals for weekly drug testing but failed to appear for drug testing on November 1 and November 8, 2018.

*D. Jurisdiction/Disposition Hearing*

On December 3, 2018, the juvenile court conducted the jurisdiction hearing. Following the hearing, the court sustained the section 300 petition as to all counts. The court declared the child a dependent and ordered the child removed from mother and father's custody, and placed with maternal aunt. Father and mother agreed that they would not "get back together." Father's court-ordered case plan included: a 52-week domestic violence program; a full drug and alcohol program; individual counseling for anger management; and monitored visitation with the Department having discretion to liberalize.

### **III. DISCUSSION**

*A. Jurisdiction Order*

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's

finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Here, we will focus on counts b-1 and b-2, which alleged that mother and father had a history of engaging in violent altercations, and that father had demonstrated violent and assaultive behavior with mother’s family members. Accordingly, we do not address the sufficiency of the evidence as to count b-3 for substance abuse.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b)(1) when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . .”

Father contends there is insufficient evidence to demonstrate that the child was harmed or at risk of harm from father’s single incident of domestic violence against mother. Moreover, although he admits to engaging in physical fights with mother’s relatives, he contends there is insufficient evidence to demonstrate that his conduct placed the child at risk because the

fights occurred outside of the family home and were not connected in any way to the child or father's conflict with mother. He also argues that at the time of the jurisdiction hearing, the factors that contributed to the violent incidents with mother's relatives no longer existed because he had no contact with the maternal relatives, did not live with mother, had ended his relationship with mother, and had no plans to associate with mother or her relatives. We disagree.

Contrary to father's characterization, the record demonstrates that father had a history of domestic violence, which placed the child at risk. Indeed, mother told the police that she and father had engaged in many arguments which sometimes became physical. "Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b)[(1)] . . . . "[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it."

[Citation.] Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg . . . ." [Citation.]" (*In re R.C.* (2012) 210 Cal.App.4th 930, 941-942; accord, *In re Jesus M.* (2015) 235 Cal.App.4th 104, 112-113.)

Father's next argument, that his fights with maternal relatives occurred outside the home and did not pose a risk to the child, is meritless. First, the record reflects that the August 2018 incident began while father held the child and walked outside the home. Moreover, that the physical violence between father and maternal relatives occurred directly outside the home, rather

than inside it, does not diminish the risk to the child posed by father's tendency toward violence.

Finally, father's argument that his conflicts with mother and maternal relatives did not place the child at risk because he no longer resided with mother and had no intention of associating with mother or the maternal relatives also is without merit. Neither the issuance of the September 17, 2018, protective order nor father's moving out of mother's residence deterred him from having further contact with mother. B.P. reported that father had snuck into mother's bedroom as recently as September 24, 2018, after the issuance of the protective order, and father admitted to violating the protective order. The juvenile court could reasonably infer from this record that, based on the violent altercations with maternal grandfather and maternal uncle, the domestic violence against mother, father's failure to abide by a court order to stay away from mother, and father's prior conviction for assault with a firearm, the child was at a substantial risk of being harmed by father's conduct. (*In re Jesus M.*, *supra*, 235 Cal.App.4th at pp. 112-113; *In re R.C.*, *supra*, 210 Cal.App.4th at pp. 941-942.) Substantial evidence supports the jurisdictional finding against father pursuant to section 300, subdivision (b)(1).

#### B. *Removal Order*

Father also contends the juvenile court erred by removing the child from his custody.<sup>3</sup> Under section 361, subdivision (c)(1), a juvenile court may remove a dependent child from a parent's

---

<sup>3</sup> Father does not dispute he was a custodial parent for purposes of section 361.

custody when it finds clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.”

We review the court’s dispositional finding for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) Because the trial court’s finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there is substantial evidence of the existence of clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: “““The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, the clear and convincing test disappears and ‘the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) We need not take a position on this dispute, because the evidence was sufficient in this case under either measure.

The juvenile court found there were no reasonable means to keep the child safe without removing her from the parents’

custody. Father asserts he was a “non-offending” parent and thus substantial evidence did not support the child’s removal from his custody. As discussed above, we disagree and conclude that substantial evidence supports dependency jurisdiction over the child based on father’s violent conduct.

Moreover, father’s participation in domestic violence, anger management, and drug programs was in its early stages. “Thus, the danger to the child[] was ongoing until Father and Mother fulfilled the court’s reunification orders.” (See *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 452 [finding substantial evidence supports removal from parents because, in addition to evidence supporting jurisdiction finding, they had not begun treatment program at time of disposition hearing].) The disposition order removing the child from father’s custody is supported by substantial evidence.

#### **IV. DISPOSITION**

The jurisdiction finding and disposition order are affirmed.  
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

RUBIN, P. J.

BAKER, J.